

RECEIVED
FEDERAL ELECTION
COMMISSION

FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

2014 APR 21 PM 2: 25

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6683

DATE COMPLAINT FILED: Nov. 7, 2012

DATE OF NOTIFICATION: Nov. 9, 2012

LAST RESPONSE RECEIVED: Dec. 20, 2012

DATE ACTIVATED: Mar. 12, 2013

ELECTION CYCLE: 2012

EXPIRATION OF SOL: Sept. 4, 2017

COMPLAINANT:

Michael D. Gibson

RESPONDENT:

Fort Bend County Democratic Party and S. Qaisar
Imam "Q" in his official capacity as treasurer

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 431(4)(C)
2 U.S.C. § 431(9)(A)(i)
2 U.S.C. § 431(20)(A)
2 U.S.C. § 433(a)
2 U.S.C. § 434(a)
2 U.S.C. § 441d
2 U.S.C. § 441i(b)
11 C.F.R. § 100.5(c)
11 C.F.R. § 100.14(b)
11 C.F.R. § 100.22(a),(b)
11 C.F.R. § 100.24(b)
11 C.F.R. § 100.111
11 C.F.R. § 102.5
11 C.F.R. § 106.1(a)
11 C.F.R. § 106.7
11 C.F.R. § 110.11(a)-(c)
11 C.F.R. § 300.32(a)(2)
11 C.F.R. § 300.36(a),(b)

INTERNAL REPORTS CHECKED:

Commission Disclosure Reports

OTHER AGENCIES CHECKED:

I. INTRODUCTION

The Complaint alleges that Fort Bend County Democratic Party and S. Qaisar Imam "Q" in his official capacity as treasurer ("Fort Bend" or "Respondent") violated the Federal Election Campaign Act of 1971, as amended, (the "Act"), by: (1) distributing a voters guide that caused it to become a political committee but failing to register and report with the Commission; (2) using impermissible funds to pay for "federal election activity" in the form of a voters guide; and (3) including an incomplete disclaimer on the guide. *See* Compl. (Oct. 22, 2012).

Fort Bend disputes that it triggered political committee status by distributing its voters guide because the share allocable to federal candidates in the guide did not exceed the \$1,000 statutory threshold and the advertisements in the guide were the only expenditures it made during 2012. *Resp.* at 1 (Dec. 20, 2012). Fort Bend also argues that it had "sufficient funds from federally permissible sources to pay for the entirety of the mailing." *Resp.* at 2. Finally, Fort Bend admits that the guide's disclaimer did not comply fully with the Act, but requests that the matter be dismissed or, in the alternative, referred to the Alternative Dispute Resolution Office. *Id.*

We recommend that the Commission dismiss as a matter of prosecutorial discretion the allegation that Fort Bend violated 2 U.S.C. §§ 433 and 434 by failing to register and report as a political committee because the record shows that Fort Bend's expenditures for 2012 exceeded the Act's \$1,000 threshold by, at the most, approximately \$800, but caution Fort Bend regarding the Act's registration and reporting requirements. *See* 2 U.S.C. § 431(4)(C); *see also* *Heckler v. Chaney*, 470 U.S. 821 (1985). Further, we recommend the Commission find no reason to believe that Fort Bend violated 2 U.S.C. § 441i(b) or 11 C.F.R. §§ 106.7, 300.32 because it appears that Fort

1 Bend used federally permissible funds to pay for the mailer. Finally, we recommend the
2 Commission dismiss as a matter of prosecutorial discretion the allegation that Fort Bend
3 violated 2 U.S.C. § 441d because the partial disclaimer clearly identified who paid for the
4 guide, but caution Fort Bend about the Act's disclaimer requirements. *See Heckler v.*
5 *Chaney*, 470 U.S. 821 (1985).

6 II. FACTS

7 The Fort Bend County Democratic Party is registered with the Texas Ethics
8 Commission as a "County Executive Committee of a Political Party"¹ and files regular
9 state campaign finance reports disclosing its receipts and disbursements.² Fort Bend
10 describes its mission as to "mobilize Fort Bend County citizens to advocate Democratic
11 values and principles, and to elect Democratic Candidates who serve the public good and
12 act as good stewards of the public trust." *See About FBCDP, FORT BEND COUNTY*
13 *DEMOCRATIC PARTY*, http://www.fbcdp.org/houston/?page_id=2 (last visited Apr. 10,
14 2014). The Texas Democratic Party, which is registered with the Commission as a state
15 party committee of the Democratic National Committee, identifies Fort Bend as one of its

¹ The Texas Democratic Party's by-laws at III.E.6(b) define a County Executive Committee's principal purpose as including:

In addition to its statutory duties, the County Executive Committee shall have primary responsibility for planning and for coordinating the General Election campaigns of the Democratic Party's nominees within the county. In the case of nominees running for office in districts which include areas outside of the county, the County Executive Committee shall work with the Senatorial District Committee (as described in Article III.F. below). This responsibility shall include raising funds for conducting local campaigns, supporting the statewide effort for the entire ticket, producing materials and coordinating local services for all Democratic campaigns.

See The Rules of the Texas Democratic Party (2014-2015) at 9, available at <http://www.txdemocrats.org/pdf/TDP-Rules.pdf>.

² According to Texas Ethics Commission disclosure reports, in 2012 Fort Bend accepted political contributions aggregating \$53,326.69 and made expenditures aggregating \$53,137.34.

1 county parties, and explains on its website that "[m]uch of the work of the Texas
2 Democratic Party is conducted by our County Chairs and County Parties. From running
3 the primaries and organizing the precinct and county/senate district conventions to
4 turning out Democratic voters in the general election, strong County Chairs and County
5 Parties are crucial to our efforts." *See Our Party*, TEXAS DEMOCRATS,
6 <http://www.txdemocrats.org/party/counties> (last visited Apr. 10, 2014), *see also* Texas
7 Democratic Party, Amended Statement of Organization (Apr. 15, 2013).

8 Available information shows that between September 4 and October 1, 2012, Fort
9 Bend distributed a 32-page guide to voters in Fort Bend County.³ The voters guide
10 contains political advertising featuring endorsements of federal, state, and local
11 Democratic candidates; voter registration information; generic campaign activity; and
12 commercial advertising by local businesses. Compl. at 1; Resp. at 1, Attach. The guide's
13 political advertising is primarily focused on state and local candidates, *see* Resp., Attach.
14 at 6-13, 15-18, 20-23, but at least three of the guide's advertisements directly reference
15 and advocate for or against federal candidates, *see* Resp., Attach. at 2, 14, 32.

16 In the first such advertisement, the guide references U.S. Representative Al Green
17 (9th Congressional District, Texas), and states, "Al Green respectfully asks for your vote
18 in November." Resp., Attach. at 2. The second advertisement entitled, "How Do I Vote
19 A Straight Democratic Ticket?," urges the defeat of Romney and Ryan to "Save Social
20 Security & Medicare" and advocates for the election of Obama by including the words
21 "Vote Democrat!" next to a picture of a button stating "Seniors Obama." Resp., Attach.

³ Although the Response describes the voter guide as 36 pages, the complete copy attached to the Response is in fact 32 pages in length. *See* Resp. at 1, Attach.

at 14. It also displays the Obama-Biden 2012 campaign symbol. *Id.* Similarly, the last page of the guide contains the words “The Left is Right – Vote Blue” next to the same Obama-Biden 2012 campaign symbol. Resp., Attach. at 32.

At the bottom of the cover page the guide contains a one-sentence disclaimer, which is not set off in a box and appears in italicized font. Resp., Attach. at 1. It states: “Pol. Adv. Paid for by the Fort Bend County Democratic Party, Quisar ‘Q’ Iman, Treasurer. – Judicial candidates included in this newsletter do not endorse any other candidate.” *Id.*

III. ANALYSIS

A. Political Committee Status

The Complaint alleges that, “[i]n addition to the parts of the guide containing explicit advocacy for clearly identified federal candidates, the partisan ‘federal election activity’ communications” of the guide also qualify as “expenditures” under the Act. Compl., at 1-2. As a result of these alleged expenditures, the Complaint claims that Fort Bend exceeded the spending threshold that requires entities to register and report with the Commission as political committees.

A local committee of a political party is defined as an organization that by virtue of the by-laws of a political party or the operation of state law is part of the official party structure, and is responsible for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a state. 11 C.F.R. § 100.14(b). Pursuant to 2 U.S.C. § 431(4)(C), a local committee of a political party is a political committee if it: (1) receives contributions aggregating in excess of \$5,000 during a calendar year; (2) makes payments exempted from the definition of contribution or expenditure aggregating in excess of \$5,000 during a calendar year;

- 1 (3) makes contributions aggregating in excess of \$1,000 during a calendar year; *or*
2 (4) makes expenditures aggregating in excess of \$1,000 during a calendar year.⁴
3 An "expenditure" is defined as "any purchase, payment, distribution, loan, advance,
4 deposit, or gift of money or anything of value made by any person for the purpose of
5 influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i), 11 C.F.R.
6 § 100.111.

7 Fort Bend is a local committee of a political party because as a County Executive
8 Committee under the Texas Democratic Party's by-laws it is responsible for the day-to-
9 day operations at the county level. Rules of the Tex. Dem. Party, Art. III.E.6(b) (2014-
10 2015), *available at* <http://www.txdemocrats.org/pdf/TDP-Rules.pdf>. Thus, pursuant to
11 2 U.S.C. § 431(4)(C), if Fort Bend made expenditures totaling more than \$1,000 during a
12 calendar year it is a political committee.⁵

13 Fort Bend acknowledges that it spent \$19,790 to print and mail the guide, but
14 argues that doing so did not trigger political committee status or registration and
15 reporting obligations. Resp. at 1, 2. Specifically, the Response asserts that "at most
16 approximately 5%" of the cost of printing and mailing the guide (i.e., a prorated share of

⁴ Unlike political committees defined under 2 U.S.C. § 431(4)(A), the Commission has generally not applied the major purpose test identified by *Buckley v. Valeo*, 424 U.S. 1, 79 (1976), to local party committees subject to 2 U.S.C. § 431(4)(C). See, e.g., Advisory Op. 1980-28 (the Republican Committee of Chester County) (concluding that a local party committee would qualify as a political committee once it made expenditures over \$1,000); Advisory Op. 1980-110 (Greenburgh Democratic Campaign Committee) (same); Advisory Op. 1999-4 (Republican Party of Minnesota) (same); see also Memorandum to the Commission, Recirculated First GCR, MURs 6036/6043 (Yolo County Democratic Central Committee/Davis Democratic Club) (Jul. 6, 2009) (local party committees failed to register with the Commission and were analyzed as political committees under 2 U.S.C. § 431(4)(C) without major purpose test). Accordingly, Fort Bend's status as a local party committee is based on the monetary statutory thresholds alone. See 2 U.S.C. § 431(4)(C).

⁵ The alternative criteria for triggering political committee status do not apply here. See 2 U.S.C. § 431(4)(C). Based on our review of Fort Bend's state disclosures, during the calendar year 2012, it did not receive contributions in excess of \$5,000 for the purpose of influencing a federal election; nor did it make payments for exempt activities in excess of \$5,000 or direct contributions to federal candidates in excess of \$1,000. See *id.*, see also 2 U.S.C. §§ 431(8)(A), (B), (9)(B).

1 \$989.50) constituted expenditures on behalf of federal candidates, an amount less than
2 the \$1,000 statutory threshold. *Id.* at 1; *see also* 2 U.S.C. § 413(4)(C). Respondent does
3 not identify which pages of the guide it includes in its calculation.

4 In determining whether an organization makes an expenditure by paying for
5 communications, the Commission "will analyze whether expenditures for any of an
6 organization's communications made independently of a candidate constitute express
7 advocacy either under 11 C.F.R. § 100.22(a), or the broader definition at 11 C.F.R.
8 § 100.22(b)." *See* Political Committee Status: Supplemental Explanation and
9 Justification, 72 Fed. Reg. 5595, 5606 (Feb. 7, 2007). Under the Commission's
10 regulations, a communication contains express advocacy when it uses phrases such as

11 "vote for the President," "re-elect your Congressman," "support the
12 Democratic nominee," "cast your ballot for the Republican challenger for
13 U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '94,"
14 "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly
15 identified candidates described as Pro-Life or Pro-Choice, "vote against
16 Old Hickory," "defeat" accompanied by a picture of one or more
17 candidate(s), "reject the incumbent," or communications of campaign
18 slogan(s), or individual word(s), which in context can have no other
19 reasonable meaning than to urge the election or defeat of one or more
20 clearly identified candidate(s), such as posters, bumper stickers,
21 advertisements, etc. which say "Nixon's the One," "Carter '76,"
22 "Regan/Bush," or "Mondale!"

23
24 11 C.F.R. § 100.22(a); *see also* *Buckley v. Valeo*, 424 U.S. 1, 44 (1976).
25

26 The Commission's regulations state that the cost of expenditures between federal
27 and non-federal candidates shall be attributed to each candidate "according to the benefit
28 reasonably expected to be derived." 11 C.F.R. § 106.1(a). Thus, the costs associated
29 with the portions of the voters guide that expressly advocate for or against federal
30 candidates are allocated to determine whether Fort Bend has exceeded the \$1,000
31 threshold for registering and reporting as a political committee. *See id.* § 106.1.

1 Three portions of the voters guide contain express advocacy under 11 C.F.R.
2 § 100.22(a). First, the advertisement entitled "How Do I Vote a Straight Democratic
3 Ticket?" contains express advocacy. The top portion of the advertisement presents the
4 question of how to vote a "Straight Democratic Ticket," and then urges voters to do so:
5 "Look for the Straight Ticket option at the top of your ballot. On an electronic machine,
6 press the Straight Democratic option, and submit your vote." *Id.* These instructions are
7 also accompanied by the Obama campaign's logo. *Id.* The bottom portion of the
8 advertisement contains the words "Vote Democrat!" next to a "Seniors Obama" logo.
9 There is a clear plea for action to vote for Obama as part of the "Straight Democratic
10 Ticket." *Id.*

11 Next, the Green advertisement contains express advocacy because it identifies
12 Green as a U.S. Congressman, contains a photograph of the candidate next to the words
13 "Re-Elect Al Green" and states "Al Green respectfully asks for your vote in November."⁶
14 *Resp.*, Attach. at 2.

15 Third, the final page of the guide states at the top "Join the Fort Bend Democratic
16 Party" and then identifies a number of local and state Democratic associations. *Resp.*,
17 Attach. at 32. It concludes with the words "The Left is Right – Vote Blue" next to the
18 Obama-Biden 2012 campaign logo. *Id.* Thus, the page is express advocacy because it
19 includes a specific exhortation to vote for "Blue" candidates, the color associated with the

⁶ Fort Bend asserts that "Congressman Green" paid for his advertisement in the guide. *See Resp.* at 1. But the Response does not state the amount Green paid for his advertisement, or how Green purportedly paid for the ad (either personally or through his campaign). *Id.* Al Green for Congress' reports filed with the Commission disclose that it made a \$10,000 disbursement to Fort Bend County Democratic Party on August 17, 2012, for GOTV efforts in Fort Bend County, but they do not further specify the type of GOTV this disbursement supported. *See* Al Green for Congress, Amended 2012 October Quarterly Report at 29 (Feb. 7, 2013); available at <http://docquery.fec.gov/pdf/183/13940104183/13940104183.pdf>. Thus, for the purposes of our analysis, we have assumed that this portion of the voters guide was paid for by Fort Bend.

1 Democratic Party, and calls for the election of Obama and Biden by name (and logo).
2 See 11 C.F.R. § 100.22(a), (b). As the only candidates identified on this page are federal
3 (Obama and Biden), and allocation is used only when there are both federal and non-
4 federal candidates involved, all of the costs associated with this page are expenditures.
5 See 11 C.F.R. § 106.1; *cf.*, Second Gen. Counsel's Rpt. MUR 5492 (Freedom, Inc.) at 10-
6 11 (using a 50/50 time-space allocation ratio between one federal and one non-federal
7 candidate in voter guide and a 65/35 time-space allocation ratio between federal
8 candidate and other non-federal candidates in newspaper ad).

9 These "federal" portions of the voters guide, when taken together, account for
10 3 pages of the 32-page mailer, or approximately 9%. Allocating the costs results in a
11 federal portion of approximately \$1,780, which exceeds the Act's \$1,000 political
12 committee threshold.⁷

⁷ Although there are a number of ways to determine the "benefit reasonably expected to be derived," the Respondent did not indicate how it determined that the benefit to federal candidates was 5%. Regardless of the method used, however, the benefit derived exceeds the \$1,000 expenditure threshold. In this matter, we applied the allocation method adopted in MUR 5486 (Libertarian Party of Oregon), which allocated the federal portion of a newsletter based on the proportion devoted to federal candidates. See First Gen. Counsel's Rpt. at 11-13, MUR 5486 (Libertarian Party of Oregon); Certification, MUR 5486, (Libertarian Party of Oregon) (May 4, 2005). Here, at least three pages of the 32 page guide expressly advocate for clearly identified candidates. Resp., Attach. at 2, 14, 32. This equals 3/32 or 9% of the guide, which amounts to \$1,781 (.09 x \$19,790).

Other allocation methods yield a similar or greater amount. For example, using a straight candidate-by-candidate allocation method (*i.e.*, comparing the number of federal candidates in proportion to the total number of candidates, here two federal and twelve non-federal candidates) would yield a federal ratio of 2/14, or 14%. In addition, a hybrid approach, which looks at the number of federal candidates in proportion to the number of state candidates for each advertisement, but then apportions those ratios to the percentage of space each portion of the advertisement took up, would yield at least \$1,783 in expenditures. See Factual and Legal Analysis at 5, n.3, MUR 6170 (Tuscola Co. Dem. Comm.). Using that method here, Fort Bend's 32-page voter guide would consist of 53% (or 17 pages) devoted to express advocacy for federal, state, and local candidates. Of the percentage of the guide devoted to express advocacy, 17% (3 pages out of 17 pages) are devoted to expressly advocating for federal candidates. Resp., Attach. at 2, 14, 32. Applying the hybrid calculation yields \$1,783.07 as the federal share of the cost of the guide (53% x \$19,790 = \$10,488.70; \$10,488.70 x 17% = \$1,783.07).

Thus, regardless of the method applied, Fort Bend triggered the \$1,000 statutory threshold for political committee status. Moreover, even if the Green advertisement is omitted from the allocation

1 Although Fort Bend appears to have exceeded the statutory political committee
2 threshold with its voters guide, it did so by no more than \$800. Thus, we recommend that
3 the Commission dismiss the allegation that Fort Bend violated 2 U.S.C. §§ 433(a) and
4 434(a) by failing to register with the Commission as a political committee and file the
5 required disclosure reports, but caution Fort Bend regarding the threshold for political
6 committee status. *See Heckler v. Chaney*, 470 U.S. 821 (1985); *see also* MUR 6205 (Fort
7 Bend Democrats) (dismissal where the federal portion of the expenses for the door
8 hangers may have exceeded the \$1,000 threshold for expenditures by \$1,800).⁸ *See also*
9 MUR 6153 (New Mexico Democratic Legislative Campaign Committee, *et al.*)
10 (dismissal where the party committee exceeded the statutory threshold for political
11 committee status by about \$500).

12 **B. Payment for Federal Election Activity**

13 The Complaint alleges that Fort Bend funded its expenditures for the voters guide
14 from a state account in contravention of the Act's requirement that federal election
15 activity be funded exclusively with federally permissible funds. Compl. at 2;
16 *see* 2 U.S.C. § 441i(b); 11 C.F.R. § 300.32. In addition, the Complaint alleges that all of
17 Fort Bend's overhead and administrative expenses should have been funded with 36%
18 federal funds.⁹ Compl. at 3.

calculation, *see supra*, n. 6, the express advocacy amount would still exceed the \$1,000 threshold, although by \$236 (6.25% x \$19,790)).

⁸ Fort Bend Democrats is not the same entity as the Respondent in this matter, the Fort Bend County Democratic Party.

⁹ With regard to the payment of administrative costs and exempt activities (that are not federal election activities) in connection with federal and non-federal elections, Commission regulations set forth that state, district, and local party committees must only use funds that are subject to the prohibitions and limitations of the Act, or they may allocate such expenses between their federal and non-federal accounts. 11 C.F.R. § 106.7(b). State, district, and local party committees that have established federal and non-federal accounts must allocate no less than 36% of these expenses to their federal accounts during

1 Federal election activity is defined as (1) voter registration activity during the
2 period 120 days before a regularly scheduled federal election; (2) voter identification,
3 get-out-the-vote, and generic campaign activity conducted in connection with an election
4 in which a candidate for federal office appears on the ballot; (3) a public communication
5 that refers to a clearly identified candidate for federal office that promotes, attacks,
6 supports or opposes ("PASOs") a candidate for that office; and (4) services provided
7 during any given calendar month by an employee of a state, district, or local party
8 committee who spends more than 25 percent of his or her compensated time during that
9 month on activities in connection with a federal election. 2 U.S.C. § 431(20)(A);
10 11 C.F.R. § 100.24(a).

11 Federal election activity does not include any amount expended or disbursed by a
12 state or local party committee for, among other things, a public communication that refers
13 solely to clearly identified candidates for nonfederal office and does not PASO a clearly
14 identified federal candidate unless it otherwise qualifies as voter registration, generic
15 campaign activity, get-out-the-vote, or voter identification. 2 U.S.C. § 431(20)(B);
16 11 C.F.R. § 100.24(c).

17 Regardless of whether a local party committee is a "political committee," it must
18 finance federal election activity with funds subject to the limitations and source
19 prohibitions of the Act through a specified account and meet recordkeeping and reporting
20 requirements. 2 U.S.C. § 441i(b)(1); 11 C.F.R. §§ 102.5, 300.32(a)(2), 300.36. The

Presidential and Senate election years (and the preceding year). *See* 11 C.F.R. § 106.7(d)(2)(ii), (3)(ii). Fort Bend chose not to establish separate accounts nor to allocate between federal and non-federal accounts and rather rely on its funds being federally compliant. *See* Resp. at 2; Supp. Resp. at 1. Our review of Fort Bend's state disclosures shows that during the 2012 year, it had sufficient federally compliant funds to fund administrative expenses and exempt activities. During the preceding year, 2011, Fort Bend used \$1,500 in non-federally compliant funds to pay for office overhead and rental expenses. *See* n.10, *infra*. Even if we were to subtract this amount, it appears that Fort Bend also had sufficient federally compliant funds to pay for its remaining administrative costs and exempt activities in 2011.

1 committee must also demonstrate through a reasonable accounting method that whenever
2 such an organization makes a contribution or expenditure or payment for exempt activity
3 the organization has received sufficient federally permissible funds. *See* 11 C.F.R.
4 § 300.36(a)(1) (requiring reasonable accounting method for federal election activity for
5 local party committees or organizations); *see also id.* § 102.5(b) (same, but for
6 organizations financing political activity in connection with federal and non-federal
7 elections). In addition, a local party committee that also qualifies as a political committee
8 with \$5,000 or more of aggregate receipts and disbursements for federal election activity
9 during a calendar year must file reports disclosing its receipts and disbursements made
10 for federal election activity. *Id.* § 300.36(b)(2).

11 Here, Fort Bend's 2012 voters guide contains three of the four defined types of
12 federal election activity. *See* 2 U.S.C. §§ 431(20)(A), 441i(b). The guide contains voter
13 registration activity because it informs citizens how to register to vote within the 120-day
14 period before the November 6 federal election. *Resp.*, *Attach.* at 4 - 5, 25; *see also*
15 2 U.S.C. § 431(20)(A)(i); 11 C.F.R. §§ 100.24(a)(2)(i)(A)-(G), 100.24(b)(1). The guide
16 also contains federal election activity in the form of GOTV messages informing citizens
17 on voting schedules, and generic campaign activity promoting the Democratic Party and
18 its local clubs, conducted in connection with an election in which federal candidates
19 appear on the ballot. *Resp.*, *Attach.* at 18 - 20, 28 - 30. *See* 2 U.S.C. § 431(20)(A)(ii),
20 431(21); 11 C.F.R. §§ 100.24(a)(3)(i)(A)-(D), 100.24(b)(2), 100.25. Finally, as discussed
21 above, *see supra* pp. 8-9, the political advertisements clearly identifying Green, Obama,
22 and Biden expressly advocate for their elections, and thus constitute federal election
23 activity in the form of a public communication that refers to clearly identified federal.

1 candidates and promotes and supports those candidates. *See* 2 U.S.C. § 431(20)(A)(iii);
2 11 C.F.R. §§ 100.24(b)(3), 100.26, 100.27.

3 The Response asserts that Fort Bend used federally permissible funds to pay for
4 the \$19,790 in printing and mailing costs associated with the voters guide. Resp. at 1-2.
5 Fort Bend also clarified that (1) all of the funds it received during 2012 were federally
6 compliant; (2) Texas law is similar to federal campaign finance laws in that it prohibits
7 contributions from the treasuries of unions and corporations; and (3) Fort Bend's largest
8 individual donors usually do not exceed around \$1,000. Supp. Resp. at 1.

9 Based on our own review of Fort Bend's state disclosures, it appears that Fort
10 Bend financed its activities in connection with a federal election with federally
11 permissible funds. 2 U.S.C. § 441i(b); 11 C.F.R. § 102.5(b). Fort Bend stated in its
12 Supplemental Response that Texas law maintains equivalent prohibitions and limitations
13 to those in the Act and, therefore, that all of its funds are appropriate federal funds. Supp.
14 Resp. at 1. Fort Bend was also able to demonstrate that it had sufficient federally
15 permissible funds to pay for federal election activity by referencing its state reports.
16 *See* discussion at nn. 2, 9-10. Although we have no information as to what accounting
17 method Fort Bend used, Fort Bend's assertion that its voters guide was paid for with
18 federally permissible funds appears to rely on its claim that all its funds were federally
19 compliant. Resp. at 1-2; Supp. Resp. at 1. By avoiding receipt of federally
20 impermissible funds in 2012, Fort Bend adequately ensured that the funds it used to pay
21 for federal election activity in 2012 were federally compliant.¹⁰

¹⁰ Respondent is correct that Texas law generally prohibits corporations and labor organizations from making political contributions. *See* TEX. ELEC. CODE ANN. § 253.094 (West 2009), available at <http://www.ethics.state.tx.us/statutes/11title15.html#253.091>. An exception to this general rule allows corporations and labor organizations to make a political expenditure to finance the establishment, administration, maintenance or operation of a general-purpose committee. *See id.* § 253.100(a), (c).

1 Accordingly, we recommend that the Commission find no reason to believe that
2 Fort Bend violated 2 U.S.C. § 441i(b) and 11 C.F.R. §§ 106.7, 300.32, because its
3 disbursements for federal election activity appear to have been made from funds subject
4 to the limitations and prohibitions of the Act.¹¹

5 **B. Disclaimer Requirements**

6 Finally, the Complaint alleges that Fort Bend's voter guide did not display the
7 appropriate disclaimer pursuant to 11 C.F.R. § 110.11(c)(ii)(requiring disclaimers to be
8 contained in a printed box set apart from the other contents of the communication).
9 Compl. at 3.

10 Any person making a disbursement for communications expressly advocating for
11 a clearly identified federal candidate must comply with the disclaimer requirements at
12 2 U.S.C. § 441d and 11 C.F.R. § 110.11(a)-(c). As discussed above, the voters guide
13 expressly advocates for the elections of Obama, Biden, and Green to federal office and

Indeed, Fort Bend disclosed to the Texas Ethics Commission the receipt of a \$1,500 corporate contribution from GP Industrial, Inc. on February 18, 2011, reportedly used for the purpose of "Office Overhead/Rental Expense." See Fort Bend, Political Party Report Regarding Funds from Corporations and Labor Organizations at 3 (July 15, 2011), *available at* <http://204.65.203.5/public/498279.pdf>. Fort Bend also disclosed receipt of a \$2,000 contribution from "Fort Bend Employee Federation" on August 20, 2012, which appears to be the Texas affiliate of the American Federation of Teachers union. See Fort Bend, County Executive Committee Campaign Finance Report at 9 (Oct. 26, 2012), *available at* <http://204.65.203.5/public/547720.pdf>. It is not clear from the state disclosure reports whether this entity is a labor organization or political action committee. If it is a contribution from a labor organization, then it would be prohibited pursuant to 2 U.S.C. § 441b. Nevertheless, during the 2012 calendar year – the applicable period for determining Fort Bend's obligation as a federal political committee – given that Fort Bend received an aggregate amount of \$53,326.69 in contributions during 2012, if we were to subtract the \$2,000 Fort Bend Employee Federation contribution, then there would be remaining sufficient funds from other federally permissible sources to cover the costs of the voters guide, *i.e.*, \$19,790.

¹¹ If Fort Bend is a political committee, it is also required to report this disbursement to the Commission because it exceeded \$5,000 in receipts and disbursements for federal election activity. See 11 C.F.R. § 300.36(b)(2). Because we conclude that Fort Bend became a political committee, there is an apparent violation of this requirement to report federal election activity, although it is not alleged. Because we recommend dismissal on the political committee status, however, we do not recommend that the Commission pursue this violation.

1 for the defeat of Romney and Ryan. The front page of the guide contains some elements
2 of a conforming disclaimer — *i.e.*, it contains the name of the entity paying for the
3 communication, and it appears to be of sufficient type size and reasonable color contrast
4 between the background and printed statement to be clearly readable — but it does not
5 include the address, telephone number, or internet address of the person who paid for the
6 communication, and it does not state whether the communication is authorized by any
7 federal candidate or candidate's committee, nor is the disclaimer contained in a printed
8 box separate from the other contents of the communication. *See* 2 U.S.C. § 441d;
9 11 C.F.R. § 110.11 (a)-(c). Thus, Fort Bend did not fully comply with the Act's
10 disclaimer requirements. The Response admits that the disclaimer was not displayed in a
11 printed box nor did it state whether the mailer was authorized by a federal candidate.
12 Resp. at 2. Fort Bend explains that it was not fully aware of the Commission's disclaimer
13 requirements, its counsel has since now admonished them, and it will comply with the
14 requirements in the future. *Id.*

15 Consistent with past practice in similar situations where there was a failure to
16 include the requisite disclaimer, but there was some information identifying the
17 committee payor, we recommend that the Commission dismiss the allegation that Fort
18 Bend violated 2 U.S.C. § 441d by not including a conforming disclaimer on its 2012
19 voters guide, and issue a letter of caution. *See, e.g.*, MUR 6633 (Republican Majority

Campaign PAC); MUR 6438 (Arthur B. Robinson); MUR 6270 (Rand Paul Committee);
MUR 6278 (Segers); *see also Heckler v. Chaney*, 470 U.S. 821 (1985).

V. RECOMMENDATIONS

1. Dismiss the allegations that Fort Bend County Democratic Party and S. Qaisar Imam "Q" in his official capacity as treasurer violated 2 U.S.C. §§ 433, 434, and 441d and issue a letter of caution.
2. Find no reason to believe that Fort Bend County Democratic Party and S. Qaisar Imam "Q" in his official capacity as treasurer violated 2 U.S.C. § 441i(b) and 11 C.F.R. §§ 106.7, 300.32.
3. Approve the attached Factual and Legal Analysis.
4. Approve the appropriate letter.
5. Close the file.


Daniel A. Petalas
Associate General Counsel
for Enforcement


Date

4-18-14

BY:


Kathleen M. Guith
Deputy Associate General Counsel
for Enforcement


William A. Powers
Assistant General Counsel


Christine C. Gallagher
Attorney